IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

Crl.MC.No. 3936 of 2006()

CRRP.30/2006 of SESSIONS COURT, THALASSERY
CMP.739/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, KUTHUPARAMBA
CRIME NO.6 OF 2006 OF MALOOR POLICE STATION

.....

PETITIONER: ACCUSED NO.1

KARIKOTH ARAPEEDIKAYIL RIYAS,
S/O. LATE HAMZA, AGED 22 YEARS,
"RAHILA MANZIL", SHIVAPURAM POST,
KANNUR DISTRICT.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.R.O.MUHAMED SHEMEEM
SRI.T.P.SAJID

RESPONDENTS: STATE & COMPLAINANT

---

1. SUB INSPECTOR OF POLICE,
MALOOR POLICE STATION, KANNUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

3. FOREST RANGE OFFICER,
KOTTIYOOR RANGE, EDAYAT P.O. KANNOTH.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3936 OF 2006

Dated this the 5th day of December, 2006.

ORDER

The petitioner is the owner of a vehicle involved in an offence punishable under the provisions of the Forests Act. Contraband articles were allegedly transported in an auto rickshaw owned and driven by the petitioner. Two others were passengers in the auto rickshaw. All the 3 allegedly took to their heels when the police intercepted them. The petitioner alone was apprehended. Crime was registered. The vehicle was seized. Investigation is in progress. It is also submitted that proceedings under Section 61 A of the Kerala Forests Act is in progress.

2. The petitioner appeared before the learned Magistrate and applied for release of the vehicle. The learned Magistrate ordered release of the same, subject to conditions. The order was challenged before the learned Sessions Judge in revision by the State. The learned Sessions Judge did not disturb the direction for release of the vehicle, but directed, in modification of the conditions imposed that the petitioner must offer bank guarantee for the amount of Rs.53,000/-. That order was passed as early as on 31.08.2006.

3. The petitioner assails the order passed by the learned Sessions Judge in revision. He contends that the direction to furnish bank guarantee for Rs.53,000/- deprives the petitioner of the advantage of the order of release. The condition is too onerous and

harsh. A person like the petitioner cannot and will not be able to comply with that order. As a result, the petitioner's vehicle is getting rusted. It is likely to suffer damage and deterioration in custody of the officials. In these circumstances, it is prayed that the condition that the bank guarantee should be produced may suitably be altered and there may be an appropriate modification/alteration of the condition imposed.

4. I am conscious of the decision of the Supreme Court in **State of Karnataka v. K.Krishnan** [(2000) 7 Supreme Court Cases 80]. My attention has been drawn specifically to the observations in para.7, which mandate that a bank guarantee is the minimum that should be insisted ordinarily. My attention was also be drawn to the decision in **Sunderbhai Ambalal Desai v. State of Gujarat** [A.I.R 2003 SC 638], which impresses upon the Courts the need to ensure that properties do not get deteriorated and rusted in the custody of the court and the need of the court to make every endeavour to ensure that custody is entrusted to appropriate persons to avoid unnecessary damage and deterioration for such items of property.

5. Having considered all the relevant inputs, I am certainly is of the opinion that while damage/destruction of the vehicle must be avoided at any cost, it is not necessary to literally comply with the directions in **State of Karnataka v. K.Krishnan** in all cases. Appropriate modification of the conditions can be made in the anxiety

of the court to ensure that the property-the auto rickshaw, the means of livelihood of the petitioner is not damaged and destroyed.

6. In the result:

i) This Crl.M.C is allowed, in part.

ii) It is directed that the vehicle can be released to the petitioner on condition that he executes a bond for Rs.53,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) If the sureties produce title deeds/or solvency certificates and the learned Magistrate is satisfied about the sufficiency and solvency of the sureties, the auto rickshaw can be released on the strength of such sureties.

R.BASANT
JUDGE

rtr/